

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ODIS BANKS §
v. § CIVIL ACTION NO. 6:16cv818
TEXAS DEPARTMENT OF CRIMINAL §
JUSTICE, ET AL.

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

This lawsuit was severed out of a larger civil action and was referred by the Court to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The Magistrate Judge directed the Plaintiff to file an amended complaint and to pay the statutory filing fee or seek leave to proceed *in forma pauperis*. When Plaintiff did not comply, a Report was issued recommending dismissal of the lawsuit without prejudice.

Plaintiff filed objections to this Report together with an application for leave to proceed *in forma pauperis*. The Magistrate Judge then ordered Plaintiff to pay an initial partial filing fee of \$3.87, in accordance with 28 U.S.C. §1915(b). The Magistrate Judge also granted Plaintiff an extension of time in which to file his amended complaint.

Plaintiff again did not comply with either of these orders, and the Magistrate Judge issued a second Report again recommending dismissal without prejudice for failure to prosecute or to obey an order of the Court. Plaintiff filed a motion for extension of time in which to object, and was granted an extension in which to file his objections to the Magistrate Judge's Report, or, alternatively, to pay the initial partial filing fee and file his amended complaint. Plaintiff paid the

initial partial filing fee, but has never filed an amended complaint despite being ordered to do so on three separate occasions. He has failed to prosecute his case.¹

Plaintiff did not object to the Report of the Magistrate Judge recommending dismissal; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 12) is **ADOPTED** as the opinion of the District Court. It is further

¹In addition, a review of the complaint shows that the lawsuit, as originally pleaded, lacks merit on its face. Plaintiff asserts that he is being required to work without any meaningful compensation. The Fifth Circuit has held that requiring inmates to work without compensation does not violate the Constitution, nor does it amount to slavery or involuntary servitude. *Wendt v. Lynaugh*, 841 F.2d 619, 621 (5th Cir. 1988). The State maintains discretion to determine whether and under what circumstances inmates are paid for their labor, and inmates sentenced to incarceration cannot maintain a viable Thirteenth Amendment claim if the prison system requires them to work. *Ali v. Johnson*, 259 F.3d 317, 317 (5th Cir. 2001). Plaintiff was given repeated opportunities to amend this complaint, but did not do so. His claim lacks an arguable basis in law and fails to state a claim upon which relief may be granted.

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. Finally, it is
ORDERED that any and all motions which may be pending in this action are hereby
DENIED.

So Ordered and Signed

Apr 16, 2018



Ron Clark, United States District Judge